

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

NATIONAL LABOR RELATIONS BOARD,	:	
	:	
Applicant,	:	
	:	
	:	Civil No. <u>2:20-cv-2810</u>
v.	:	
	:	
ALARIS HEALTH AT HAMILTON PARK,	:	
	:	Motion Day:
	:	October 19, 2020
Respondent.	:	

**NOTICE OF MOTION OF THE NATIONAL LABOR RELATIONS
BOARD FOR ADJUDICATION IN CIVIL CONTEMPT AND FOR
OTHER CIVIL RELIEF**

PLEASE TAKE NOTICE that on September 25, 2020, or as soon thereafter as counsel may be heard, counsel for Applicant National Labor Relations Board (the Board) shall move before the United States District Court for the District of New Jersey at the Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey 07101, for the entry of an Order: (1) adjudging Respondent Alaris Health at Hamilton Park (Alaris Hamilton) in civil contempt for its continued failure and refusal to comply with a May 27, 2020 order of this Court enforcing an investigatory subpoena *duces tecum* and an

investigatory subpoena *ad testificandum* issued by the Board; (2) granting the Board's request for an award of attorneys' fees and costs incurred by the Board in connection with this motion; (3) imposing a prospective fine of \$10,000 if Alaris Hamilton fails to comply with this adjudication in contempt, and an additional \$500 per day for each day the violations continue, and (4) granting such other relief as may be just and proper.

PLEASE TAKE FURTHER NOTICE that in support of this motion, the Board shall rely upon the attached Brief in Support of Motion of the National Labor Relations Board for Adjudication in Civil Contempt and for Other Civil Relief, the facts of which have been verified under oath by the undersigned in lieu of a separate declaration. A proposed form of Order has also been submitted in support of this motion.

PLEASE TAKE FURTHER NOTICE that opposition, if any, to the relief sought herein shall be in writing, filed with the Clerk of the District Court and served upon the undersigned no later than fourteen (14) days prior to the return date of this motion pursuant to L. Civ. R. 78.1(a).

WHEREFORE, the Board respectfully requests:

I. That Alaris Hamilton be adjudged in civil contempt for failing and refusing to comply with this Court's May 27, 2020 Order;

II. That upon such adjudication in contempt, this Court enter an order requiring Alaris Hamilton, its officers, agents, successors, and assigns to purge itself of such contempt. Specifically, the Board requests that Alaris Hamilton be ordered to:

a. Within fourteen (14) days after service of such order, fully comply with Subpoena *Duces Tecum* A-1-180SE2N by producing to the Board all materials responsive to each request therein. If materials responsive to a request once existed but can no longer be produced, Alaris Hamilton shall, in accordance with the instructions attached to Subpoena *Duces Tecum* A-1-180SE2N, describe those materials in a written certification to the Board, along with a full explanation as to how those materials came to no longer exist;

b. Fully comply with Subpoena *Ad Testificandum* B-1-180SDXD by appearing and being deposed upon a date to be determined by the Board; and

c. Pay to the Board all such costs and expenses, including reasonable attorneys' fees calculated at the prevailing market rate in Washington, D.C., that the Board incurred in the investigation, preparation, presentation and final disposition of this motion. All of said costs, unless agreed to by the parties, shall be fixed by further order of this Court upon submission by the Board of a certified statement of such costs and expenses.

III. That to assure against violations of this contempt adjudication, this Court to impose a prospective noncompliance fine of \$10,000 if Alaris Hamilton fails to comply with the relief requested in Paragraph II(a-b), and an additional \$500 per day against Alaris Hamilton for each day this Court finds the violations have continued;

IV. That this Court take other such actions and grant such other relief as may be just, reasonable, and proper to assure compliance with the Court's Order, and as this proceeding in civil contempt may require.

Respectfully submitted,

NATIONAL LABOR RELATIONS BOARD

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Dated at Washington, D.C.
this 25th day of September, 2020